

TOWN OF EAST KINGSTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES

FILE

October 19, 1999

AGENDA

7:30 Laurie Carbone et al – Appeal from Administrative Decision (Rehearing) (199-08)

Members attending: Chairman John V. Daly, Vice Chairman David A. Ciardelli, Norman J. Freeman, David C. Boudreau, Alternate Members Richard A. Cook, Nathaniel B. Rowell, J. Roby Day, Jr., and Selectman Donald C. Andolina.

Absent: Edward A. Cardone.

Others attending: Dayle Bell – Court Reporter, Kent Shepherd, Keri Marshall, David Woodburn, Atty. Robert Deshaies, Laurie Carbone, Carol Freeman, Andrew Berridge, Wayne Couture, Charles Marden, Sherry & Bob Nichols, Kevin Murphy, David Morse, Joe Freeman, Fire Chief Alan Mazur, Police Chief Henry Lewandowski, and other members of the public who did not address their concerns.

Laurie Carbone et al – Appeal from Administrative Decision (Rehearing): Chairman Daly opened the meeting at 7:37 p.m. for an appeal from administrative decision filed by Laurie Carbone. He stated that for the record this is a rehearing of the original appeal filed by Laurie Carbone regarding the Planning Board's May 20, 1999 decision to approve a site plan review for Chuck Woodlands Realty Trust (CWRT) in relation to ADMAT Enterprises.

Giving a brief review of this case's history, Chairman Daly stated that in May 1999 the Planning Board approved a site plan review for CWRT. Laurie Carbone appealed the Planning Board's decision to the Zoning Board of Adjustment (ZBA) where the ZBA upheld the Planning Board's decision. Laurie Carbone then filed a Motion for Rehearing, which was granted and a rehearing was held. The ZBA, at this rehearing reversed its original decision and granted Laurie Carbone's appeal. Newly aggrieved CWRT then filed a Motion for Rehearing, which was granted. This meeting tonight is that rehearing. This is a fresh start and the case is back to the initial issues of the original appeal.

He went on to say that the issues in the original appeal cited several areas where the appellant felt the Planning Board made errors in their interpretation of the zoning ordinance. They being:

Article IV.A - Any use that may be obnoxious, injurious or in the nature of a nuisance by reasons of production, emission of odor, dust, smoke, refuse matter, fumes, noise, vibration or similar conditions or that is dangerous to the comfort, peace, enjoyment, health or safety of the community or lending to its disturbance or annoyance, is prohibited;

Article XII.3.(e) - Light manufacturing enterprises, except biological and chemical material; service or utility business not in conflict with the public health, safety, convenience or welfare of substantially detrimental or offensive to adjacent zones or destructive to property values, when permitted by the Planning Board; and

Article XII.5.(g) - No inherent noise and recurrently generated noise shall be detectable beyond the property line in excess of the average level of street and traffic noise generally heard at the time and point of observation...

He stated that those issues are once again before the board. Regarding the arguments of a conflict of interest with some of the ZBA members, those same members will recuse themselves from also voting in this hearing. Members present who will not be voting are Chairman Daly, Mr. Cook and Mr. Day. Five voting members remaining consist of Vice Chairman Ciardelli, who will chair the meeting, Mr. Freeman, Mr. Rowell, Mr. Boudreau and Mr. Andolina.

Chairman Daly further stated that since this is the fourth hearing on this matter, it is likely that everyone has said what he or she has wanted. He stated that any comments or questions must be directed to the chairman and that upon being recognized by the chairman, the speaker is to give his name and address as a stenographic record of the meeting is being taken.

At this time Chairman Daly, Mr. Cook and Mr. Day left the table and Mr. Ciardelli assumed the Chairman's position.

Mr. Ciardelli began by saying that this case has been a difficult and an emotional one. The Board will now look at the original petition submitted by Laurie Carbone where she alleges the Planning Board erred in its decision to approve a site plan review for CWRT regarding ADMAT Enterprises. He stated that the Board wants to do justice to everyone involved.

He went on to say that in reviewing the guidelines and laws he came across the following statute which he read aloud.

I. Appeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative office. Such appeal shall be taken within a reasonable amount of time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. This officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

II. For the purposes of this section:

(a) The "administrative officer" means any official or board who, in that municipality, has responsibility for issuing permits or certificates under the ordinance, or for enforcing the ordinance, and may include a building inspector, board of selectmen, or other official or board with such responsibilities.

Mr. Ciardelli stated that the "administrative officer" in this case is the Planning Board.

(b) A "decision of the administrative officer" includes any decision involving construction, interpretation or application of the terms of the ordinance. It does not include a discretionary decision to commence formal or informal enforcement proceedings, but does include any construction, interpretation or application of the terms of the ordinance, which is implicated in such enforcement proceedings.

Mr. Ciardelli stated that this is the key here tonight. Although there has been discussion about the actual site plan review process, what is before this board is only the interpretation of the zoning ordinance. The Board has no jurisdiction beyond the scope of the articles cited by the appellant (Articles IV.A, XII.3(e), and XIII.5.(g) and that he will continue to direct this meeting to stay within that focus.

At this time Atty. Deshaies stated that he was in agreement with Mr. Ciardelli, however as he requested at the last meeting, he objects to Mr. Andolina's voting participation in the hearing. He stated that in Mr. Andolina's capacity as selectman, he has given advice and council to the appealing party.

Mr. Andolina responded that for the record, he would not be recusing himself from this case.

Mr. Ciardelli then directed Laurie Carbone to present her case.

Mrs. Carbone stated that Chairman Daly read aloud the items she feels are in conflict with the site plan review's approval. She said that no one enforces what is written even though everyone knows what is going on... noise, safety issues, and depreciation of property value. She is willing to address each of the zoning violations if that is what the board wants.

She went on to say that the trucks are right there in her bedroom window at all hours of the day and night. She owns residential property and questioned when is she supposed to sleep. She and her neighbors have lived here for 15 to 25 years and know that this trucking business is a change of use from a lumber company. She said that she is just trying to be fair and do what is right for both her and the town. She would hate to see this go to court, but it will if its not justified to both sides. She asked who are the enforcers of the ordinance and then stated that they need to enforce them. She has been to the Selectmen, the Planning Board and the ZBA; she has spent hundreds of dollars and hours trying to get some resolution. She stated that she is totally confused. This site plan review was not done properly – it needs to start all over again.

Mrs. Carbone continued to say that she has looked to the town for support. She pays her property taxes on her residential property and she should be allowed to sleep, enjoy her house, and have company over. She cannot do this with the trucking business operating the hours that it does. She stated that she submitted a letter at an earlier meeting supporting her claim of diminishing property value because of the trucks. She asked if the site plan was done right – step by step. She said that the State sent a letter stating that CWRT's driveway needed to come into compliance for his current use. This was even a condition set by the ZBA at one of the meetings. She asked why Mr. Marden has never been forced to put in a new driveway.

Mr. Ciardelli then directed Mr. Marden to present his case.

Atty. Deshaies stated that it is unnecessary to rehash what went on before at the other meetings, but he would like to note the highlights of those meetings. He said that at the May 20, 1999 Planning Board meeting, the Planning Board dealt with many of the same issues that Mrs. Carbone has addressed in her appeal. At that meeting, Mrs. Carbone et al presented complaints of noise, safety, and whether or not the proposed use was a permitted use. The Planning Board discussed service businesses and light industrial uses.

They acknowledged that any light industrial use would have some trucking component.

He went on to say that Andrew Berridge, former Planning Board member, FLUAC member, and former Selectman, stated that he personally participated in the drafting of the rezoning of the light industrial district. As Mr. Berridge understood, what is currently operating at the MSK complex is considered light industrial. Atty. Deshaies added that even the Deputy Fire Chief indicated that the Fire Department's Life Safety Code Manual describes the current use (trucking business) as light industrial. He said that the Planning Board approved the site plan review and that they even had Town Counsel's memo, which set forth the scheme for the Planning Board to follow.

Atty. Deshaies stated that ADMAT Enterprises only has seven trucks. With only seven trucks, how can the business be creating a disturbance 24-hours a day as alleged by the appellant? He said that any industrial use of the light industrial property when that property is developed would include trucking activity. In order for the Planning Board to take jurisdiction on the site plan review application, they had to make a determination of whether the trucking business was a permitted use in that zone.

He further stated that Mrs. Carbone's appeal asks two things:

1. Is this trucking operation a permitted use?; and
2. Does this trucking operation constitute a nuisance?

He explained that in Articles XII.3.(e) and XII.5.(g), the issues are public health and safety, detrimental or offensive to adjacent zones, destructive to property values, and noise. Article IV.A also covers nuisance issues. All three articles fall under nuisance items.

When focusing on item #1, Mr. Marden indicated at a previous meeting that these seven trucks operated by ADMAT is a service business, which is allowed under the bylaw. Atty. Deshaies stated that all light industrial service businesses have some sort of trucking activity. The bylaw does not specifically prohibit trucking garages, but it does say that commercial service operations are allowed. As with any statute or bylaw, one must look to see what was intended. He asked what was intended here? Under the ordinance's definition of light industrial it states that a permitted use is "any commercial uses as defined in Article VII of the East Kingston Zoning Ordinance". Under the ordinance's definition of commercial purposes it states "any use of land or buildings for the purpose of manufacturing, repairing or selling at retail or wholesale a product, good or service". He stated that this is relevant because what is permitted in a light industrial zone is set forth in Article VII. Commercial definition includes service businesses and it gives warehousing as an example. Warehousing must have some sort of trucking activity. He said that in his mind, operating a trucking business is allowed in commercial and light industrial zones.

He went on to say that an amplification of this is shown in Article XII. The dictionary defines "service" as work done for others as an occupation or business. He said that this is what's being done here.

When focusing on item #2, he stated that in a 1974 court case (Pecot v. City of Manchester), the court found the use to be clearly implied by the language of the bylaw itself. Looking to Article XII, it would require the Planning Board to make a finding on the nuisance issue. All the criteria were reviewed by the Planning Board including odor, gases, lighting, etc. When looking to see if something is detrimental, they need to find significant and substantiated items. Article XII.5 states that the following list of items must be considered by the Planning Board prior to site plan approval.

- a. *Hazard or detrimental effect to adjacent property.*

He said that an example is then given: *No fire and explosion hazards shall exist as to produce dangerous exposure to adjacent properties.*

- b. *Odor*

Further definition is again provided: *No objectionable odors shall be detectable beyond the property line.*

- c. *Gases*

Further definition: *No noxious, toxic or corrosive fumes or gasses be emitted.*

Atty. Deshaies continued to say that under the noise compliant, the bylaw states that *no inherent and recurrently generated noise shall be detectable beyond the property line...* He said that this is referring to a fixed site generating constant noise – not something that occurs occasionally. Any site involving trucks will produce noise – trucks on the highway produce noise. When dealing with nuisance cases, the court generally looks to the language of the bylaw. In a 1972 court case, the issue was not the zoning but the law

of whether or not the use was a public or private nuisance. If the use causes unreasonable interference with the enjoyment of the community or causes substantial harm, then it could be deemed a nuisance. It is this requirement of “unreasonable” that is the crux of whether or not it is a nuisance.

He stated that the town made the determination that the property should be zoned light industrial. Having two different zones (light industrial and residential) abutting each other could be problematic, but that is why a buffer zone was put into effect. In a 1971 court case, an individual sued the town of Keene because the town operated an airport directly behind the plaintiff's house. The noise level broke windows. In that case, the court found the noise was intrusive and a nuisance. There is the question of degree. The bylaw is setup to be the planning board's call, but it is up the zoning board of adjustment to overrule them only if they find the planning board made an unreasonable determination.

Again, Atty. Deshaies stated that there are two issues: whether the use is a permitted use (he thinks it is) and whether or not the business interferes unreasonably the neighbors. The Planning Board said that this was not the case as they still voted to approve the business, thus finding it was a permitted use and that it was not a nuisance.

In response to Atty. Deshaies claim of the trucking business being a permitted use in the light industrial zone, Mrs. Carbone stated that the trucks being used here are 18-wheelers – “heavy commercial” trucks. She said that she doesn't believe the small town of East Kingston intended for this kind of trucking activity. This could mushroom into something bigger. She said that there have been safety issues with ADMAT trucks and the school bus. She has documentation from a certified appraiser indicating that a trucking garage, that operates 24-hours a day, has, in fact, diminished her property's value. This is not what the town had in mind.

Mrs. Sherry Nichols stated that she has listened to Charlie Marden's attorney and believes that he has missed it. She said that it was how the business got there that is also a huge problem. The site plan review was never done properly. Previous board members have been removed. She asked what board members were going to gain from this project. She said that she is not opposed to anyone making a living.

She went on to say that although there are only seven trucks, they almost hit a school bus, twice. A signed letter from the bus driver was sent to the Selectmen, and the police were called. She asked if it makes any difference if a school bus is in trouble. She knows the town needs light industrial zoning but what has gone on here is wrong. She again stated that they should look at the board members. She says as a result of this trucking activity, her property value has gone down.

Mrs. Nichols further stated that the school bus was almost hit two times by ADMAT trucks. What article of the zoning ordinance will matter – this is a safety issue. She said that she has to drive her grandson to and from school everyday now. She said that one of the ZBA members indicated that he felt Charlie Marden had changed his story. He told the Planning Board one thing, then told the ZBA another. Charlie Marden should be able to make a living but not at the expense of the abutters. Charlie Marden's children aren't in danger like ours, and his property value has not decreased like ours.

Wayne Couture stated that he lives in town and is a realtor. He has been to the past hearings regarding this case and believes one of the major problems here is that the trucking business was brought on to the property and in full operation before it ever received any permits or approval. After it was in operation Marden was then told to apply for site plan review. The Site Plan Review Regulations clearly state what is to be done first – before approval can be given. A list of permitted uses is also provided for the light industrial zone. A trucking garage is not listed. A similar case in Plaistow (Atlas Motors) resulted in hours of operation being imposed and the trucking company was forced to change its access road.

He continued to say that in response to Atty. Deshaies examples of court cases – this is little East Kingston, not Manchester. He believes that when the area was rezoned to light industrial, the Planning Board and Town meant it to accommodate small businesses. A complete site plan review was not done. Permits were not obtained. As a resident, he must get a permit for any type of alteration to his home or for the operation a small home occupation. This trucking garage was illegally in operation before any permits or approval was given. He said he does not approve of the practice of build now and ask forgiveness later. Too many places are allowing this. The property owner goes ahead and develops before any approval and figures that since it's already done, the town must give them approval. And most times, the town does.

Mr. Couture further stated that he believes the letter from Town Counsel is being ignored. Who is supposed to enforce the rules? Who checks the list?

Mr. Ciardelli stated that the focus of the discussion has changed to the regulations, where the ZBA has no jurisdiction. The discussion needs to keep to the interpretation of the zoning ordinance. He said that although those regulation issues may be a problem, the ZBA has no authority over those matters. They need to stick to the interpretation of zoning ordinance and determine whether or not the Planning Board erred in that capacity.

Mrs. Carbone stated that after the initial Planning Board meeting, she received a call from a Planning Board member who indicated their (Planning Board's) decision was not right. That Planning Board member then directed her to go to the Selectmen who could enforce the articles. That Planning Board member also said that it was now up to the Selectmen as this issue was out of their hands. That member said the Planning Board made that vote in an effort to move the case onto another level. She was told that the Selectmen have the authority to impose hours of operation.

Atty. Deshaies responded that Mrs. Carbone is relaying broad generalizations. Either this "Planning Board member" should be identified or this discussion should end. Names should be given to substantiate these claims.

Mrs. Carbone stated that this is a small town and she does not have the funds to spend on an attorney. The town is important to her. She was told to go to the Selectmen, then told to go to the ZBA. She has been to all the boards without any relief. The rules are written and need to be enforced. An 18-wheeled tractor-trailer truck is a "heavy commercial" vehicle and it does not belong in East Kingston.

Bob Nichols, husband of Sherry Nichols stated that he has a couple of items to discuss.

1. This issue mostly concerns CWRT and it's abutters –not a lot of others who live someplace else as they don't have to put up with what he and his neighbors put up with.
2. NH Practicing Land Use book indicates that upon site plan review approval, the site plan design must be developed in a safe manner – this was not done. Review must also be given to drainage, groundwater, pollution, etc. A traffic study should have been conducted. None of this was done. When a truck exits the driveway it takes up the whole road – both sides. There have been odors from the trucks and the site and he has called the police about them. Trucks smelling like they are carrying garbage go into the light industrial park and then those drivers tell the police that they got a flat tire and that is why they entered it.
3. Was this issue of a change of use ever properly addressed? Where are the hours of operation?

He went on to say that Charlie Marden and his attorney have presented "their own" interpretation of the ordinance. Traffic studies were not done, well locations and wetlands were not considered. The scope of the operation was not addressed. He then submitted into the record a letter from East Kingston School Bus Driver Peggy Atwell and read it aloud.

To the Selectmen of East Kingston,

I am reporting two serious incidents, which have put my bus #22, the children and myself in jeopardy. On Sept. 2, 1999, between 3-3:30 p.m., I was almost struck head on by an ADMAT truck while turning around to continue my bus route, north on 108. I had backed into the Carbone's driveway and was pulling onto Route 108 when I heard the screeching of brakes and tires. The children and I were very frightened

Mr. Nichols stated that he had been a witness to this incident and he called the police. He said the truckers were laughing and joking about this almost collision. They don't even live in this town. Children are in danger – what is wrong with this town?

I am aware of the increased trucking on 108 and 107A because of the change of business in the old MSK lumberyard. I have constantly been alarmed by the number and size of the trucks, especially on the narrow bridge by the dam. There is hardly enough room for my bus, let alone the bus and a huge tractor trailer truck. I am very fearful of this situation with the oncoming of winter. Today, Sept. 14, 1999, while coming south on 107A, by #101 Powwow River Road, continuing to the white house next to the riding arena, a red truck swerved and slammed on its brakes to avoid the bus, leaving several feet of skid marks.

Mr. Nichols stated that he went to the site of this almost accident and photographed the skid marks, which measured about 5 car-lengths long.

With the bad weather just approaching, I am asking for some rectification of this problem and an assurance of safety in place for the children and I. I am also forwarding a complaint to the Transportation Department, as we are only into the second week of school. I am dismayed over these occurrences.

*Sincerely,
Peggy L. Atwell*

Mr. Nichols exclaimed that this matter is scary and the truckers don't seem to care – they don't live here. He said that he is not here

to complain about the general trucking along the roadway; he doesn't mind progress. This trucking garage needs to conduct decent hours of operation and maintain safe speed limits. He stated that this area used to be a pretty area in town, but with the noise and smell from this parcel, the town is going to grow like Portsmouth. When children are in jeopardy we need to think about this business.

Mrs. Carbone stated that Mr. Nichols' comments fall under the safety issues raised in Article IV.A.

COMMENTS FROM BOARD MEMBERS

Mr. Rowell stated that the point of there being only 18 wheels to these trucks is questionable. He took the time to count the wheels on one of ADMA T's trucks. There were 22 wheels – very big heavy-duty trucks. He said he understands that light industrial zones can not exist without some trucking activity, but the town has to decide what types of trucking activity should be allowed. The term "truck" is a generic term. The trucks used when the parcel was a sawmill are very different to what is being used there now.

He went on to say that all of the arguments presented are valid, but the arguments regarding the Planning Board's action on the site plan review process is not for consideration here. In the petition for a rehearing, Atty. Deshaies said the basis of the ZBA's decision to grant the appeal (last month), was not within the ZBA's jurisdiction. Procedural appeals are directed to Superior Court, not the ZBA. The ZBA must act on the interpretation of the articles previously outlined – interpretation of what is meant by the words in the ordinance relating to noise, nuisance, etc. He stated that everyone has a different interpretation of these.

Mr. Andolina asked that Mr. Marden address the hours of operation and safety issues brought up by the abutters.

Atty. Deshaies responded that the trucks leave the site at approximately 3:30 –4:00 a.m. and return (if they return) between the hours of 4:00 p.m. and 9:00 p.m. The other matters raised by Mr. Nichols are matters of enforcement on a State highway. The term of safety implies to the safety at the entrance and exit of the site. He said that at one of the earlier meetings it was agreed that Mr. Marden would apply for a new driveway permit and he has since done so.

When asked about the hours of operation, Atty. Deshaies stated that the trucking business operates from about 4-4:30 a.m. to 9:00 p.m. 6 days a week (not usually on Sundays). He said that it is not Mr. Marden's desire to be rigid, but that hours of operation for a trucking business is detrimental to the business' success – if hours of operation are imposed, then a great portion of the business is cut out. Overnight deliveries are part of trucking today. Most trucking activity is growing toward later in the day deliveries. The Town rezoned the area light industrial, which includes a broad range of use that included trucking activity. If the hours of operation are limited, then the town destroys the value of this light industrial property.

Mr. Andolina stated that he resides on Route 108 and he sees that the trucks are trying to observe the rules. He said he doesn't hear the Jake brakes. He does, however, want to see a balance between the business and the abutters.

Atty. Deshaies replied that the major purpose of the site plan review is to determine that, as it is all within the purview of the Planning Board. The ZBA must determine whether or not the trucking garage is contrary to the use – was the Planning Board was clearly wrong –is the use unreasonable?

Mr. Andolina stated that people in the town of East Kingston have objected to abutters erecting signs on their property, where noise or obnoxious odors are not an issue. If residents can be concerned about signs, why would it be unreasonable for abutters to claim that a 24-hour a day trucking garage is a nuisance?

Atty. Deshaies said that it was not the same as what is explained in the bylaws. A nuisance must show to be a substantial interference of private property.

Mr. Andolina rebutted that something is a nuisance if it deprives the abutters reasonable use of their properties.

Atty. Deshaies stated that that thinking is of the role of a selectman and that is why he thought Mr. Andolina should recuse himself from this case.

Mr. Andolina replied that he was asking this in the role of a ZBA member.

Mr. Nichols stated that Atty. Deshaies seems to have dismissed the trucking safety concerns he presented. These incidents did not just occur as the trucks were pulling out on to the road, one was traveling on Route 107A – two different areas. The driveway to the business has never been addressed. No one checked to see if there was enough turning room or site distance. The fact that these trucks take up the whole road when exiting the complex is scary. It seems there is more concern with the profit of the business than

the concerns of the neighbors.

Mr. Ciardelli responded that in reviewing the Planning Board's interpretation of the zoning ordinance, this portion of Mr. Nichols' complaint could fall under the safety issues raised in Articles IV.A and XII.3.(e).

Mr. Boudreau stated that he believes that these issues were considered by the Planning Board – they discussed all these issues.

Mr. Nichols responded that they should not wait until a school bus with children is hit before taking action.

Mr. Boudreau stated that the minutes of the Planning Board meeting show reflect that these issues were considered. You can't stop trucks and you can't limit their size.

Mrs. Carbone asked how much these trucks weigh fully loaded - East Kingston is a small town. She said she doesn't believe the town meant allowing heavy commercial, 22-wheelers, 7-days a week, 24-hours a day when they approved a light industrial zone. What was approved as a kiln on the Marden property has now turned into a trucking garage. All she is trying to do is find a happy medium – she is not trying to stop all trucking or light industrial activity. She asked if any of the Board members wanted ADMAT trucks in their bedroom window. They are running 7-days a week – when is she supposed to sleep? She cannot sleep a 7-8 hour night like most people because of this activity. She has lived here 16 years and has not had a problem like this before. She stated that Mr. Marden should not be able to make his money at her expense. She then claimed that there are more than 7 trucks going in and out all the time.

Mrs. Nichols asked why the Planning Board has not had any say in what is going on with the other trucks.

Mrs. Carbone exclaimed that this business is just getting bigger and bigger and the whole town will be sorry for allowing it. What Mr. Marden is doing to the town is not right.

Mr. Couture stated that Mr. Berridge's statements about this being discussed prior to the rezoning of that parcel was right, however, no specific discussions were made. These decisions were made on the old way to do a site plan review and not the new RSA ways. Marden put the business on the site without permits, got forgiveness from the Planning Board and then he got approval. The Planning Board did not have the full information – they should go back and do it over.

Mr. Ciardelli replied that it is the ZBA charter to decide whether the Planning Board erred in their interpretation of the zoning ordinance in relation to the site plan review. The Board needs to look at Articles IV.A, XII.3.(e), and XII.5.(g).

Mr. Couture rebutted that these are heavy commercial trucks running over the weight limit – this is dangerous.

Mr. Nichols stated that he has respect for Mr. Rowell whom at the last hearing read something that said abutters do have some rights.

Mr. Rowell responded that he was wrong when he presented that as a basis for his vote. He had read an excerpt from Town Counsel's letter, however it was off base as far as the site plan review procedures were concerned– procedures were out of Board's jurisdiction. Reading the letter may have swayed the opinion of the other voters that night. Again he stated that if the argument is about Planning Board procedures, it can't be dealt with here before this board. A flaw in that process is appealable to Superior Court, not at the ZBA level although those issues may be valid.

Mr. Ciardelli then called for a motion noting that this argument could go on forever.

Mr. Boudreau began to make a motion, withdrew it and asked for clarification of the actual language of the appeal that is before them.

MOTION: Mr. Boudreau motioned to deny Laurie Carbone's Appeal from Administrative Decision. Mr. Freeman seconded.

DISCUSSION: None.

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| Mr. Ciardelli called the vote: | Mr. Freeman – in favor | Mr. Rowell – opposed |
| | Mr. Boudreau – in favor | Mr. Andolina – opposed |
| | Mr. Ciardelli – in favor | |

The motion carried 3-2. Mr. Ciardelli closed this public hearing at 8:55 P.M.

At this time Chairman Daly, Mr. Cook, and Mr. Day returned to the table and resumed their positions as active members.

OTHER BUSINESS:

Minutes: The Board reviewed the minutes dated September 22, 1999 and without any objections approved them for the record.

Signatures: Members signed the Rules and Procedures signature page reflecting the Board's adoption of these bylaws.

Training Session: Members acknowledged the OSP Fall Conference schedule. Members interested in attending were advised to contact the board secretary by November 5th.

With no further business the meeting adjourned at 9:05 p.m.

Catherine Belcher

Minutes completed and on file October 22, 1999.